

THE HOMES (FITNESS FOR HUMAN HABITATION) ACT 2018

The Act amends the Landlord and Tenant Act 1985 to imply into any new lease where the term is for less than seven years granted after 20 March 2019 that the property should be fit for human habitation.

What, then, does fit for human habitation mean? There is not a clear definition and the Act is couched in somewhat vague terms. If the property is "not reasonably suitable for occupation" having regard to matters such as its state of repair and freedom from damp, it is not fit for human habitation.

The Act states that a property will not be fit for habitation if it has a prescribed hazard, those hazards are defined in the Housing Act 2004. They are hazards that pose a risk to the health or safety of an occupier. It is not enough that one of these hazards exists – the presence of the hazard must mean that the property is "not reasonably suitable for occupation".

For example, dampness caused by condensation does not fall within section 11 of the Landlord and Tenant Act 1985 in most cases. It will not be a defence for a landlord to say that the dampness does not arise from any disrepair if the property is unfit under the Act. However, it will be for the tenant to show that it is a risk to the health of the occupiers – and it must be an actual, not a hypothetical, occupier. A small amount of mould will presumably not meet the test of "not reasonably suitable for occupation" having regard to the property as a whole.

There are many regulations already in place to cover the standards required before letting out a property, however that does not mean that the Act can be ignored. The Act has been welcomed by tenants groups and proper responsible landlords, but it may be open for abuse, so landlords will be wise to consider carefully any claim made by the tenant with respect to the Act.

It is therefore incumbent on landlords to ensure that they have a proper system in place for responding to letters before action. If you receive a letter or notification from your tenant or those representing your tenant, please do not hesitate to contact one of our experienced solicitors here at Glazer Delmar, where we will be happy to assist.